

# House Study Bill 635 - Introduced

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON HOLT)

## A BILL FOR

1 An Act relating to the employment of unauthorized aliens and  
2 providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1.   NEW SECTION.   95.1   Definitions.

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1.   *"Agency"* means an agency, department, board, or  
5 commission of this state or a political subdivision that issues  
6 a license for purposes of operating a business in this state.

7     2.   *"Economic development incentive"* means a grant, loan, or  
8 performance-based incentive awarded by a government entity of  
9 this state. *"Economic development incentive"* does not include a  
10 tax credit or tax incentive program.

11    3.   *"Employ"* means hiring or continuing to employ an  
12 individual to perform services.

13    4.   *"Employee"* means an individual who provides services  
14 or labor for an employer in this state for wages or other  
15 remuneration. *"Employee"* does not include an independent  
16 contractor.

17    5.   *"Employer"* means a person, as defined in chapter 4, that  
18 transacts business in this state, that has a license issued by  
19 an agency in this state, and that employs one or more employees  
20 in this state. *"Employer"* includes this state, a political  
21 subdivision of this state, and a self-employed individual.  
22 In the case of an independent contractor, *"employer"* means  
23 the independent contractor and does not mean the person or  
24 organization that uses the contract labor.

25    6.   *"E-verify program"* means the employment verification  
26 program as jointly administered by the United States department  
27 of homeland security and the United States social security  
28 administration or any successor program.

29    7.   *"Government entity"* means this state or a political  
30 subdivision of this state that receives and uses tax revenues.

31    8.   *a. "Independent contractor"* means a person that carries  
32 on an independent business, that contracts to do a piece of  
33 work according to the person's own means and methods and that  
34 is subject to control only as to results. Whether a person is  
35 an independent contractor is determined on a case-by-case basis

1 through various factors, including whether the person does any  
2 of the following:

- 3 (1) Supplies tools or materials.
- 4 (2) Makes services available to the general public.
- 5 (3) Works or may work for a number of clients at the same  
6 time.
- 7 (4) Has an opportunity for profit or loss as a result of  
8 labor or service provided.
- 9 (5) Invests in facilities for work.
- 10 (6) Directs the order or sequence in which the work is  
11 completed.
- 12 (7) Determines the hours when the work is completed.
- 13 (8) "*Knowingly employ an unauthorized alien*" means the  
14 actions described in 8 U.S.C. §1324a, and shall be interpreted  
15 consistently with 8 U.S.C. §1324a and any applicable federal  
16 regulations.
- 17 *b.* Independent contractor status includes an individual who  
18 performs services and is not an employee pursuant to section  
19 3508 of the Internal Revenue Code.
- 20 9. "*License*" means a permit, certificate, approval,  
21 registration, charter, or similar form of authorization, other  
22 than a professional license, that is required by law and that  
23 is issued by an agency, allowing the licensee to do business  
24 in this state.
- 25 10. "*Social security number verification service*" means  
26 the program administered by the United States social security  
27 administration or any successor program.
- 28 11. "*Unauthorized alien*" means an alien who does not have  
29 the legal right or authorization under federal law to work in  
30 the United States as described in 8 U.S.C. §1324a(h)(3).

31 Sec. 2. NEW SECTION. 95.2 **Knowingly employing unauthorized**  
32 **aliens.**

33 1. *Knowingly employing unauthorized aliens prohibited.* An  
34 employer shall not knowingly employ an unauthorized alien. If  
35 an employer uses a contract, subcontract, or other independent

1 contractor agreement to obtain the labor of an alien in  
2 this state, and the employer knowingly contracts with an  
3 unauthorized alien or with a person who employs or contracts  
4 with an unauthorized alien to perform the labor, the employer  
5 violates this subsection.

6     2. *Complaints.*

7     a. The attorney general shall prescribe a complaint form  
8 for a person to allege a violation of subsection 1. The  
9 complainant shall not be required to list the complainant's  
10 social security number on the complaint form or to have the  
11 complaint form notarized. Complaints shall be submitted to the  
12 attorney general or a county attorney. A complaint that is  
13 submitted to a county attorney shall be submitted to the county  
14 attorney in the county in which the alleged unauthorized alien  
15 is or was employed by the employer. This subsection shall not  
16 be construed to prohibit the filing of anonymous complaints  
17 that are not submitted on a prescribed complaint form.

18     b. On receipt of a complaint on a prescribed complaint form  
19 that an employer allegedly knowingly employs or employed an  
20 unauthorized alien, the attorney general or county attorney  
21 shall investigate whether the employer has violated subsection  
22 1. If a complaint is received but is not submitted on a  
23 prescribed complaint form, the attorney general or county  
24 attorney may investigate whether the employer has violated  
25 subsection 1.

26     c. The attorney general or county attorney shall not  
27 investigate complaints that are based solely on race, color,  
28 or national origin. The county sheriff or any other local law  
29 enforcement agency may assist in investigating a complaint and  
30 shall do so upon request by the attorney general or county  
31 attorney. When investigating a complaint, the attorney general  
32 or county attorney shall verify the work authorization of the  
33 alleged unauthorized alien with the federal government pursuant  
34 to 8 U.S.C. §1373(c). A state, county, or local official shall  
35 not attempt to independently make a final determination on

1 whether an alien is authorized to work in the United States.

2     *d.* A person who knowingly files a false or frivolous  
3 complaint under this subsection is guilty of a simple  
4 misdemeanor.

5     3. *Required notifications.*

6     *a.* If, after an investigation, the attorney general or  
7 county attorney determines that the complaint is not false and  
8 not frivolous, the attorney general or county attorney shall  
9 notify the following entities of the unauthorized alien:

10     (1) The United States immigration and customs enforcement.

11     (2) The local law enforcement agency.

12     *b.* The attorney general shall notify the appropriate county  
13 attorney to bring an action pursuant to subsection 4 if the  
14 complaint was originally filed with the attorney general.

15     4. *Court action required.* An action for a violation of  
16 subsection 1 shall be brought against the employer by the  
17 county attorney in the district court of the county where the  
18 unauthorized alien employee is or was employed by the employer.  
19 The district court shall expedite the action, including  
20 assigning a hearing at the earliest practicable date.

21     5. *Court order — first violation.* On a finding of a first  
22 violation as described in subsection 7, the court shall require  
23 by order all of the following:

24     *a.* The employer shall terminate the employment of all  
25 unauthorized aliens.

26     *b.* (1) The employer shall be subject to a three-year  
27 probationary period for the business location where the  
28 unauthorized alien performed work.

29     (2) During the probationary period, the employer shall file  
30 quarterly reports on the form prescribed in section 252G.3 with  
31 the county attorney for each new employee who is hired by the  
32 employer at the business location where the unauthorized alien  
33 performed work.

34     *c.* The employer shall be required to file a signed sworn  
35 affidavit with the county attorney within three business days

1 after the order is issued. The affidavit shall state that the  
2 employer has terminated the employment of all unauthorized  
3 aliens in this state and that the employer will not knowingly  
4 employ an unauthorized alien in this state.

5 (1) The court shall order the appropriate agencies to  
6 suspend all licenses that are held by the employer if the  
7 employer fails to file a signed sworn affidavit with the county  
8 attorney within three business days after the order is issued.  
9 All licenses that are suspended shall remain suspended until  
10 the employer files a signed sworn affidavit with the county  
11 attorney. Upon filing of the affidavit, the suspended licenses  
12 shall be reinstated immediately by the appropriate agencies.

13 (2) Licenses that are subject to suspension under this  
14 paragraph "c" are all licenses that are held by the employer  
15 specific to the business location where the unauthorized alien  
16 performed work. If the employer does not hold a license  
17 specific to the business location where the unauthorized alien  
18 performed work, but a license is necessary to operate the  
19 employer's business in general, the licenses that are subject  
20 to suspension under this paragraph "c" are all licenses that  
21 are held by the employer at the employer's primary place of  
22 business. On receipt of the court's order, the appropriate  
23 agencies shall suspend the licenses according to the court's  
24 order. The court shall send a copy of the court's order to the  
25 attorney general and the attorney general shall maintain the  
26 copy pursuant to subsection 8.

27 (3) The court may order the appropriate agencies to suspend  
28 all licenses described in this paragraph "c" that are held by  
29 the employer for not more than ten business days. The court  
30 shall base its decision to suspend under this subparagraph  
31 on any evidence or information submitted to it during the  
32 action for a violation of subsection 1 and shall consider the  
33 following factors, if relevant:

34 (a) The number of unauthorized aliens employed by the  
35 employer.

1 (b) Any prior misconduct by the employer.

2 (c) The degree of harm resulting from the violation.

3 (d) Whether the employer made good faith efforts to comply  
4 with any applicable requirements.

5 (e) The duration of the violation.

6 (f) The role of the directors, officers, or principals of  
7 the employer in the violation.

8 (g) Any other factors the court deems appropriate.

9 6. *Court order — second violation.* For a second violation,  
10 as described in subsection 7, the court shall order the  
11 appropriate agencies to permanently revoke all licenses that  
12 are held by the employer specific to the business location  
13 where the unauthorized alien performed work. If the employer  
14 does not hold a license specific to the business location  
15 where the unauthorized alien performed work, but a license  
16 is necessary to operate the employer's business in general,  
17 the court shall order the appropriate agencies to permanently  
18 revoke all licenses that are held by the employer at the  
19 employer's primary place of business. On receipt of the order,  
20 the appropriate agencies shall immediately revoke the licenses.

21 7. *Violations defined.*

22 a. A violation shall be considered a first violation by  
23 an employer at a business location if the violation did not  
24 occur during a probationary period ordered by the court under  
25 subsection 5, paragraph "b", for that employer's business  
26 location.

27 b. A violation shall be considered a second violation by  
28 an employer at a business location if the violation occurred  
29 during a probationary period ordered by the court under  
30 subsection 5, paragraph "b", for that employer's business  
31 location.

32 8. *Attorney general database.* The attorney general shall  
33 maintain copies of court orders that are received pursuant to  
34 subsection 5, paragraph "c", and shall maintain a database of  
35 the employers and business locations found to have committed

1 a first violation of subsection 1 and make the court orders  
2 available on the attorney general's internet site.

3 9. *Federal determination governs.* In determining whether  
4 an employee is an unauthorized alien, the court shall consider  
5 only the federal government's determination pursuant to 8  
6 U.S.C. §1373(c). The federal government's determination  
7 creates a rebuttable presumption of the employee's lawful  
8 status. The court may take judicial notice of the federal  
9 government's determination and may request the federal  
10 government to provide automated or testimonial verification  
11 pursuant to 8 U.S.C. §1373(c).

12 10. *E-verify rebuttable presumption.* For the purposes of  
13 this section, proof of verifying the employment authorization  
14 of an employee through the e-verify program creates a  
15 rebuttable presumption that an employer did not knowingly  
16 employ an unauthorized alien.

17 11. *Good-faith compliance.* For the purposes of this  
18 section, an employer that establishes that it has complied  
19 in good faith with the requirements of 8 U.S.C. §1324a(b)  
20 establishes an affirmative defense that the employer did  
21 not knowingly employ an unauthorized alien. An employer is  
22 considered to have complied with the requirements of 8 U.S.C.  
23 §1324a(b), notwithstanding an isolated, sporadic, or accidental  
24 technical or procedural failure to meet the requirements, if  
25 there is a good-faith attempt to comply with the requirements.

26 12. *Entrapment as affirmative defense.*

27 a. It is an affirmative defense to a violation of subsection  
28 1 that the employer was entrapped. To claim entrapment, the  
29 employer must admit by the employer's testimony or other  
30 evidence the substantial elements of the violation. An  
31 employer who asserts an entrapment defense has the burden  
32 of proving all of the following by a preponderance of the  
33 evidence:

34 (1) The idea of committing the violation started with law  
35 enforcement officers or their agents rather than with the



1 employer.

2 (2) The law enforcement officers or their agents urged and  
3 induced the employer to commit the violation.

4 (3) The employer was not predisposed to commit the violation  
5 before the law enforcement officers or their agents urged and  
6 induced the employer to commit the violation.

7 b. An employer does not establish entrapment if the employer  
8 was predisposed to violate subsection 1 and the law enforcement  
9 officers or their agents merely provided the employer with an  
10 opportunity to commit the violation. It is not entrapment for  
11 law enforcement officers or their agents merely to use a ruse  
12 or to conceal their identity. The conduct of law enforcement  
13 officers and their agents may be considered in determining if  
14 an employer has proven entrapment.

15 Sec. 3. NEW SECTION. 95.3 E-verify program — employer  
16 participation.

17 1. An employer, after hiring an employee, shall verify the  
18 employment eligibility of the employee through the e-verify  
19 program and shall keep a record of the verification for the  
20 duration of the employee's employment or at least three years,  
21 whichever is longer.

22 2. In addition to any other requirement for an employer to  
23 receive an economic development incentive from a government  
24 entity, the employer shall register with and participate  
25 in the e-verify program. Before receiving the economic  
26 development incentive, the employer shall provide proof to the  
27 government entity that the employer is registered with and  
28 is participating in the e-verify program. If the government  
29 entity determines that the employer is not complying with this  
30 subsection, the government entity shall notify the employer  
31 by certified mail of the government entity's determination  
32 of noncompliance and the employer's right to appeal the  
33 determination. On a final determination of noncompliance,  
34 the employer shall repay all moneys received as an economic  
35 development incentive to the government entity within thirty

1 days of the final determination.

2     3. Every three months, the attorney general shall request  
3 from the United States department of homeland security a list  
4 of employers from this state that are registered with the  
5 e-verify program. On receipt of the list of employers, the  
6 attorney general shall make the list available on the attorney  
7 general's internet site.

8      Sec. 4. NEW SECTION.   95.4   Compliance with federal and state  
9 law.

10       This chapter shall not be construed to require an employer to  
11 take any action that the employer believes in good faith would  
12 violate federal or state law.

13      Sec. 5. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
14 3, shall not apply to this Act.

15	EXPLANATION
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16           The inclusion of this explanation does not constitute agreement with  
17           the explanation's substance by the members of the general assembly.

18 This bill prohibits employers from knowingly employing  
19 unauthorized aliens. The bill directs the attorney general  
20 to prescribe a complaint form for alleged violations of  
21 the prohibition. The bill provides that complaints may be  
22 submitted to the attorney general or the county attorney in  
23 the county in which the alleged unauthorized alien is or was  
24 employed by the employer. The bill directs the attorney  
25 general or county attorney to investigate complaints they  
26 receive, and to verify the work authorization of an alleged  
27 unauthorized alien with the federal government. The bill  
28 prohibits the attorney general or county attorney from  
29 investigating complaints that are based solely on race, color,  
30 or national origin. The bill allows a county sheriff or  
31 other local law enforcement to assist in an investigation and  
32 requires such assistance upon request by the attorney general  
33 or county attorney. The bill provides that a person who  
34 knowingly files a false or frivolous complaint is guilty of a  
35 simple misdemeanor, which is punishable by confinement for no

1 more than 30 days or a fine of at least \$105 but not more than  
2 \$855 or by both.

3 The bill requires the attorney general or county attorney  
4 to notify United States immigration and customs enforcement,  
5 the local law enforcement agency, and, if the attorney general  
6 is the one investigating, the county attorney of a complaint  
7 that is not false and not frivolous. The bill requires the  
8 county attorney to bring an action in district court against an  
9 employer for a violation in the county where the unauthorized  
10 alien employee is or was employed by the employer. The bill  
11 provides that such an action must be expedited by the court.

12 The bill provides that for a first violation, the court  
13 must order the employer to terminate the employment of all  
14 unauthorized aliens and to submit a signed sworn affidavit  
15 to that effect or face suspension of business licenses by  
16 appropriate agencies. The court will also order a three-year  
17 probationary period for the employer. The court may also  
18 order the suspension of the employer's business licenses  
19 by appropriate agencies for up to 10 business days, after  
20 considering certain factors. The bill provides that for a  
21 second violation, defined as a violation occurring during a  
22 probationary period for a previous violation, the court must  
23 order the permanent revocation of the employer's business  
24 licenses. The bill directs the attorney general to maintain an  
25 online database of first-time offenders.

26 The bill provides that the district court can only consider  
27 a determination by the federal government in determining the  
28 immigration status of an alleged unauthorized alien employed  
29 by an employer. The bill provides that a determination  
30 of lawful status by the federal government will create a  
31 rebuttable presumption of the employee's lawful status, as  
32 well as a rebuttable presumption that an employer did not  
33 knowingly employ an unauthorized alien. The bill provides  
34 that an employer who establishes that the employer complied in  
35 good faith with 8 U.S.C. §1324a(b) establishes an affirmative

1 defense that the employer did not knowingly employ an  
2 unauthorized alien. The bill provides that an employer is  
3 considered to have complied with the requirements of 8 U.S.C.  
4 §1324a(b), notwithstanding an isolated, sporadic, or accidental  
5 technical or procedural failure to meet the requirements, if  
6 there is a good-faith attempt to comply with the requirements.  
7 The bill provides an employer with an affirmative defense of  
8 entrapment if certain elements are met.

9 The bill requires an employer hiring a new employee to  
10 verify the employee's employment eligibility through the  
11 federal e-verify program. The bill requires the employer  
12 to keep records of the verification for the duration of the  
13 employee's employment or three years, whichever is longer. The  
14 bill requires an employer receiving an economic development  
15 incentive from a state government entity to register with the  
16 federal e-verify program. The bill provides that an employer  
17 who does not comply with the requirement must repay all moneys  
18 received for the economic development incentive. The bill  
19 provides an employer the right to appeal a determination of  
20 noncompliance, and does not require repayment until a final  
21 determination of noncompliance is made. The bill directs the  
22 attorney general to request from the United States department  
23 of homeland security a list of employers registered with the  
24 e-verify program every three months. The bill directs the  
25 attorney general to make the list available on the attorney  
26 general's internet site.

27 The bill provides that the bill shall not be construed  
28 to require an employer to take any action that the employer  
29 believes in good faith would violate federal or state law.

30 The bill may include a state mandate as defined in Code  
31 section 25B.3. The bill makes inapplicable Code section 25B.2,  
32 subsection 3, which would relieve a political subdivision from  
33 complying with a state mandate if funding for the cost of  
34 the state mandate is not provided or specified. Therefore,  
35 political subdivisions are required to comply with any state

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1 mandate included in the bill.